

Metropolitan Commission of Sewers.

Questions to, and Opinion of, Counsel, in pursuance of the following Order of the Court (No. 5) of 1st March, 1849.

“ Read, the following Resolutions of the General Committee of Thursday, the 28th February, 1849, viz. :”—

“ That the presentation to the Court of the Resolutions as to the business and proceedings at Courts of Sewers, &c., recommended by the General Committee on the 24th inst. for adoption by the Court, be postponed till further orders.”

“ That Mr Smith, the Solicitor, be requested to attend a meeting of the Committee after the rising of the Court to-morrow (Thursday), to receive the instructions of this Committee as to drawing up a Case for the opinion of the Law Officers of the Crown and the Standing Counsel upon the proposed resolutions.”

“ Resolved, that the said Resolutions be approved.”

QUESTIONS TO COUNSEL.

You are requested to advise the Metropolitan Commissioners of Sewers if they can lawfully perform their duties by such subdivision of labour as might be effected by means of Committees appointed by the Court, and consisting respectively of a limited number of Commissioners, acting under the control of the Court; and to what extent can the Court delegate its authority to a Committee, or Sub-Committee; and what, if any authority could be conferred on a limited number of Commissioners to regulate works of a given kind, as, for instance, the cleansing of sewers, ditches, drains, &c., under Sections 50, 52, and 58, or to regulate and manage the works of the Commission generally.

If the Court can make such delegation, would the orders of the Committee, which might involve the entering into contracts, requiring works to be done and paid for, or imposing burdens on parties, be of force until afterwards confirmed by a Court of Sewers?

And to point out what steps should be taken by the Court in appointing Committees; and how far the Commissioners may avail themselves of the 20th and 21st Sections of the 11th and 12th Victoria, chapter 112.

You will also please advise if the Commissioners may appoint Officers and make any regulations for the conduct of their business and appointment of Committees, without previously making formal bye-laws under the 123rd Section of the new Act.

And also please to advise if it would be necessary that the City Commissioners should be present at, or that notice should be given to them of the holding of a Court at which any Committees should be appointed, or at which any regulations of a general character should be made.

And you will also please advise if any Commissioner would be disqualified to act as a Commissioner, by reason of his having any drainage-work done for him by the Commission at his own expense on such terms as those on which the Commission would, according to the ordinary practice, do similar work for any rate-payer not being a Commissioner.

OPINION.

We think that the Commissioners may lawfully perform all duties of mere regulation and management by means of Committees specifically appointed for the specific purpose under the 21st Section, and of direction and superintendence of works and operations in progress by means of one or two Commissioners appointed according to the 23rd Section. The Act says nothing about sub-Committees.

Orders for works and expenditure, decrees, rates, bye-laws, and other things which the Commissioners have authority to do, must originate with the Court, which speaks by its seal, and whose proceedings are public and recorded.

That original authority cannot be delegated, nor can any Committee be empowered to use the seal. Under an order of Court defining the purposes of the appointment, and referring the specific subject, a Committee may lawfully conduct the details of business which the Commissioners have directed to be done. It cannot indeed enter into contracts, for those need the seal, nor render works or burdens obligatory, for such obligation can be created only by act of Court. The Committee can originate no business, but any letters, plans, or accounts, may be referred to a Committee; and it may not only report on any matters referred to it for the information of the Court, but also, under the 21st Section, regulate and manage for every

purpose indicated in their appointment all matters referred to them specifically by the Court, in all details not requiring that act of Court, by which alone the Commissioners, as a body, can act. Practically this limitation of the powers of the Committee leaves a wide scope for the subdivision of the labours of the Commissioners. Committees may be empowered from time to time, by appointment for the specific purpose, to suggest plans, consider reports of officers, prepare and arrange details of works, and regulate and manage matters referred to them specifically by order of the Court. Each Committee should be appointed by an order of the Court, fixing the quorum, and defining the mode of discharging the business referred to it from time to time by the Court, and should report its acts to the Court by means of the minutes of proceedings. Each Court will exercise its discretion as to continuing, altering, or discontinuing the Committee; and where any new matter is referred, or new purpose contemplated, it must be embodied in an express order of Court.

Observing these formalities, the Committees may be in effect permanent; and there is no doubt that various Committees may be appointed for different purposes, for though the 21st Section speaks only of *a* Committee, the interpretation Clause extends the singular number to the plural. No previous bye-law is necessary to the appointment of a Committee under the 21st Section, or to the exercise of the powers of the Commissioners in appointing persons to offices already established, and regulating the conduct of business of such officers. Rules of general and permanent application would be "Bye-laws," and must be made according to the provisions of the 123rd Section, and no new or additional offices can be created without a bye-law.

The 12th Section excludes the Lord Mayor and other Commissioners for the City from sitting or voting, except at a Special Court of Sewers held for the purposes indicated in that clause, and the Act does not appear to require notice to them as to any other Court. But as to Special Courts held to confirm bye-laws, 123rd Section, we think it would be prudent to give them notice under the 20th Section, and they will also be qualified to act on Committees to which shall be deputed business relating to the City of London.

We think that a Commissioner would not be disqualified by having drainage work done for him at his own expense, as suggested. The disqualification (Section 5), by reason of being concerned or interested in "any contract or work made with or executed *for* the Commissioners," points at a pecuniary interest in contracts or works of a different description.

JOHN JERVIS,
JOHN ROMILLY,
J. HENDERSON.

Temple, 10th March, 1849.

Metropolitan Commission of Sewers

 QUESTIONS TO

AND

OPINION OF COUNSEL,

ON THE

RECOMMENDATION OF THE BYE-LAWS COMMITTEE

AS TO

THE MODE OF CONDUCTING

THE

BUSINESS OF THE COMMISSION.

 12th March, 1849.
